

No. GV301561

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff</i>	§	
v.	§	
	§	353 RD JUDICIAL DISTRICT
ALYON TECHNOLOGIES,	§	
TELCOLLECT, INC., and	§	
STEPHANE TOUBOUL,	§	
<i>Defendants</i>	§	TRAVIS COUNTY, TEXAS

FINAL AGREED JUDGMENT AND CONSENT DECREE

Plaintiff, State of Texas, has filed a petition for a permanent injunction and other relief in this matter pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002) (“DTPA”) upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

The plaintiff, by its counsel, and defendants, by their counsel, have agreed to the entry of this Final Agreed Judgment and Consent Decree by the Court without trial or adjudication of any issue of fact or law, and without admission of any of the violations of the Act alleged in the complaint.

FINDINGS

1. On May 15, 2003, the plaintiff filed a complaint in this cause pursuant to the provisions of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002), the allegations of which are incorporated herein.
2. The Texas Attorney General is charged with, among other things, the responsibility of enforcing the Act.
3. Defendant Alyon Technologies, Inc., was served with a summons and a copy of the complaint on May 16, 2003.

4. Defendant Telcollect, Inc., was served with a summons and a copy of the complaint on May 16, 2003.
5. Defendant Stephane Touboul was served personally with a summons and a copy of the complaint on May 27, 2003.
6. Defendants Alyon Technologies, Inc., and Stephane Touboul, at all times relevant hereto, have been doing business from One Harmon Plaza, Second Floor, Secaucus, New Jersey 07094.
7. Defendant Telcollect, Inc., at all times relevant hereto, has been doing business from 3100 Medlock Bridge Road #140, Norcross, Georgia 30071-1429.
8. The Defendants, at all times relevant hereto, engaged in trade and commerce within the meaning of the § 17.45(6) of the DTPA., including, but not limited to, Travis County, in that they facilitated access to and billed Texas consumers for and otherwise attempted to collect money from Texas consumers for, access to Videotext Services.
9. The Plaintiff, by and through its complaint, has alleged that the defendants have engaged in deceptive acts or practices in the conduct of trade and commerce, in violation of section 17.45(6) of the Act.
10. The defendants deny the factual allegations and legal contentions contained in the complaint, and specifically deny that they have engaged in unfair and deceptive acts or practices. In order to resolve this complaint, the defendants agree to execute this Final Agreed Judgment and Consent Decree.
11. Any references to the acts and practices of Defendant Alyon Technologies, Inc., or of Defendant Telcollect, Inc., shall mean that such acts and practices are by and through the acts

of such corporation's officers, agents, successors, assigns, servants, employees, and representatives; all other persons or entities directly or indirectly under their control, wholly or partially; and all other persons or entities in active concert or participation with them who receive actual or constructive notice of this Final Agreed Judgment and Consent Decree by personal service or otherwise. The term "defendants" as used in this Final Agreed Judgment and Consent Decree, means and includes all such persons and entities set forth in this paragraph 11, as well as Defendant Stephane Touboul.

12. Defendant Telcollect, Inc., denies that it has engaged in the business of billing for access to Videotext services and states that it does not intend to engage in such business. To the extent that Defendant Telcollect, Inc., does not engage in the business of billing for access to Videotext Services, the provisions of the judgment that pertain to the business of billing for access to Videotext Services are not applicable to Telcollect.
13. This Court has jurisdiction over the subject matter of the complaint having been filed herein and over the parties to this Final Agreed Judgment and Consent Decree.
14. This Final Agreed Judgment and Consent Decree, including its exhibits, is for settlement purposes only, and any and all negotiations, documents, and discussions generated in connection with them shall not be used or construed by any person as an admission of liability by the defendants to any party or person or be admissible against the defendants as evidence of any violation of any statute, law, or order, or as an admission of any liability of wrongdoing by the defendants, or the truth of any of the claims or allegations contained in the complaint, other than the jurisdictional claims or allegations.
15. All Exhibits attached to this Final Agreed Judgment and Consent Decree are part of this

Final Agreed Judgment and Consent Decree and are incorporated herein, whether or not specifically referred to.

ORDER

NOW THEREFORE, on the basis of these findings, and for the purpose of effecting this Final Agreed Judgment and Consent Decree,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

DEFINITIONS

16. The following definitions shall apply to this Final Agreed Judgment and Consent Decree:
- a. “Billing Inquiry” shall mean any written, electronic, or telephonic communication by a consumer or a law enforcement agency on behalf of a consumer to the defendants concerning any bill for access to Videotext Services.
 - b. “Express Verifiable Authorization” shall mean a contractual agreement, electronic or otherwise, in which:
 - i. The defendants clearly and conspicuously disclose to the person to be billed all material terms and conditions associated with the purchase and/or use of the product or service, including the defendants’ name and address, a business telephone number which the person to be billed may use to obtain additional information (both the address and telephone number may be included in a hyperlink), and the charges to be incurred for the product or service;
 - ii. The defendants agree, in any recurring billing situation, to notify the person to be billed of any future changes in the charges to be incurred;

- iii. The person to be billed agrees to purchase and/or use the product or service on the terms and conditions disclosed by the defendants;
- iv. The defendants require the use of an identification number or other means to prevent the unauthorized purchase and/or use of the product or service;
- v. The defendants obtain sufficient documentation for use in the event that a billed person subsequently disputes any portion of the charges, which shall include (a) documentation, electronic or otherwise, evidencing the date and time a consumer connected to the defendants' billing gateway; (b) documentation, electronic or otherwise, evidencing the unique identifying information entered by the consumer, as required by the defendants, at a date and time contemporaneous with the date and time of the consumer's connection; and (c) the information obtained from any database lookup of the consumer's identifying information;
- vi. The requirement for an identification number or other means to prevent the unauthorized purchase and/or use of the product or service, set forth in paragraph 16.b.iv. above, shall be satisfied by soliciting and obtaining from the consumer identifying information that is unique to the consumer to be charged (such as a portion of the consumer's social security number combined with other identifying information, such as the consumer's household telephone number), is not likely to be widely known, and the accuracy of which the defendants may reliably verify before a consumer may proceed with his or her purchase;

- vii. For purposes of this Final Agreed Judgment and Consent Decree, Automatic Number Identification (“ANI”) alone does not constitute Express Verifiable Authorization; and
 - viii. Satisfaction of the requirements of Express Verifiable Authorization shall constitute satisfaction of the definitions of “presubscription or comparable arrangement” as referenced in the Pay-Per-Call Rule, 16 C.F.R. § 308.2(e).
- c. “Full Credit” shall mean that the defendants permanently forgive a debt, do not make any further attempts to collect the debt, do not sell or assign the debt to a third party debt collector, withdraw from all third party debt collectors all previous assignments of the debt, do not report or cause to be reported any negative credit information to any credit reporting bureau, and withdraw all previously reported negative credit information which they have caused to be reported.
- d. “Minor Access Affidavit” shall mean an affidavit that shall take the form of Exhibit A, in which a consumer shall attest under penalty of perjury that a minor who was not competent to enter into an agreement to bind the consumer and who did not have the consumer’s authorization to access Videotext Services provided through the defendants, incurred the charges which are the subject of the bill the consumer received from the defendants.
- e. “No Authorization Affidavit” shall mean an affidavit that shall take the form of Exhibit B, in which a consumer shall attest under penalty of perjury that the consumer did not enter into an agreement for accessing Videotext Services provided through the defendants or that the Videotext Services were otherwise accessed without his or her authorization.

- f. “Records” shall include either paper or electronic data, in whatever form the defendants normally maintain such data in the ordinary course of business.
- g. “Videotext Service(s)” shall mean visual (and in some instances audio) information and entertainment services offered over the Internet through individual websites.
- h. “Wrong Number Affidavit” shall mean an affidavit that shall take the form of Exhibit C, in which a consumer shall attest under penalty of perjury that the consumer did not access any Videotext Services provided through the defendants and the bill the consumer received from the defendants lists a telephone number which was not a telephone line the consumer was subscribed to at the time the charges itemized on the bill were incurred.

AGREED INJUNCTION

- 17. The defendants agree to be enjoined, and are permanently enjoined, from doing the following in connection with the offering for sale, selling, facilitating of access to, providing of access to, billing for, or otherwise attempting to collect money from consumers for access to Videotext Services, which access occurs after the date of entry of this Final Agreed Judgment and Consent Decree:
 - a. Representing, expressly or by implication, that a consumer who is being billed or who is the subject of other collection efforts owes money unless:
 - i. The consumer is a person who has reached the age of majority by the time he or she is presented with the offer of access to Videotext Services and is capable of forming a contract; *provided, however*, that where a minor misrepresents that he or she is a person that has reached the age of majority and provides unique identifying information belonging to the adult whom the

minor purports to be, the defendants shall not be held to be in violation of this provision;

- ii. The consumer received a clear and conspicuous disclosure of all material terms and conditions of the offer to access Videotext Services;
- iii. The consumer, after having received the disclosures required by paragraph 17.a.ii. of this Final Agreed Judgment and Consent Decree, provided to the defendants Express Verifiable Authorization to:
 - (1) receive the Videotext Services for which the consumer is being billed or subjected to other collection efforts; and
 - (2) be billed for the Videotext Services charges; and
- iv. The requirements of this paragraph 17 apply to each separate connection for which the consumer is being billed or subjected to other collection efforts by any of the defendants.

- b. Failing to monitor in a reasonable manner the actions of any Videotext Service provider with which the defendants do business, including but not limited to investigating, in a reasonable manner, given their nature and quantity, consumer complaints about unauthorized billing for Videotext Service charges, to determine whether the Videotext Service provider continues to abide by the procedures established pursuant to paragraph 18 of this Final Agreed Judgment and Consent Decree, and failing to take appropriate action against the Videotext Service provider, which may include terminating their business relationship with the Videotext Service provider, should the defendants discover that the Videotext Service provider is not complying with those procedures; *provided, however:*

- i. Should the plaintiff discover that any Videotext Service provider with which the defendants do business is not abiding by the procedures established pursuant to paragraph 18 of this Final Agreed Judgment and Consent Decree, the plaintiff shall not bring an action under this Final Agreed Judgment and Consent Decree against the defendants before the plaintiff notifies the defendants of the alleged wrongdoing and provides the defendants with a reasonable time period within which to take appropriate action against the Videotext Service provider, unless the plaintiff determines that such notice to the defendants would likely result in the possible dissipation or concealment of assets, the possible destruction or concealment of records or other evidence, or the disclosure of facts that would hinder an ongoing investigation; and
 - ii. When investigating a consumer's complaint which asserts that one of the defendants' Videotext Service providers has failed to abide by the procedures established pursuant to paragraph 18 of this Final Agreed Judgment and Consent Decree, the defendants may request that the consumer furnish the defendants with information, facts, or evidence supporting the consumer's complaint.
- c. Failing to offer and provide on defendants' website a free utility to remove all dialer software used to access any billing gateway which will result in a charge from any of the defendants,
- d. Failing to comply directly with the provisions of paragraph 18 in all transactions in which the defendants are the Videotext Service provider.

18. In all contracts with Videotext Service providers, the defendants agree to be permanently restrained and enjoined, and hereby are permanently restrained and enjoined from failing to require that the Videotext Service providers:
- a. Refrain from advertising or distributing dialer programs that access the defendants' billing gateway which will result in Videotext Service charges that in any way:
 - i. Impair the ability of the person to be billed to read the terms and conditions of the Videotext Service offer or software download, including but not limited to, by way of unsolicited electronic mail messages, or by "pop-up" boxes which cannot be permanently closed or disabled by clicking on a "close" button or the "x" in the upper right hand corner of the box;
 - ii. Contain any type of spyware, virus, or additional software, other than that software necessary to connect the billed person to the billing gateway, unless such inclusions are clearly and conspicuously disclosed to the consumer;
 - iii. Impair the ability of the person to be billed to identify and remove a dialer program from his or her personal computer system, including, but not limited to, impairing the Add/Remove controls within Windows or other computer operating systems;
 - iv. Impair the ability of the person to be billed to fully disconnect from the Videotext Services and to avoid additional reconnection attempts without first obtaining Express Verifiable Authorization from the person to be billed for each connection; and
 - v. Fail to disclose the billing time increments used or relied upon by the defendants to calculate charges to such billed person (for example, six

seconds or more of usage equals one minute of charges).

- b. Refrain from downloading onto the computer of any consumer, or cause, enable, or facilitate the downloading onto the computer of any consumer, any modem dialer software without first having obtained authorization for such download from the person to be billed after clear and conspicuous disclosure of the material terms and conditions of the download.
19. To the extent applicable to the defendants' business, the defendants are hereby permanently restrained and enjoined from failing to comply with the Pay-Per-Call Rule, 16 C.F.R. Part 308 (attached hereto as Exhibit D), as it may be amended, including but not limited to the billing dispute resolution procedures set forth in Section 308.7 of said Rule. This paragraph is not intended and should not be construed as suggesting that transactions of defendants in compliance with paragraph 17 of this Final Agreed Judgment and Consent Decree are subject to the Pay-Per-Call Rule.

DEBT FORGIVENESS AND REFUNDS FOR ELIGIBLE CONSUMERS

**Charges Incurred Before June 15, 2003-
Billing Inquiry Submitted Before January 15, 2004**

20. For any consumer who has received a bill from or on behalf of the defendants for Videotext Service charges incurred on or before June 15, 2003:
- a. The defendants shall provide a Full Credit to those consumers who have not paid all or any part of those charges and who submitted a Billing Inquiry to the defendants on or before January 15, 2004;
 - b. The defendants shall be permitted to bill and collect from those consumers who have not paid all or any part of those charges and who have not submitted a Billing Inquiry

to the defendants on or before January 15, 2004, provided that the Defendants comply with the Dispute Resolution Procedures set forth in paragraph 21 of this Final Agreed Judgment and Consent Decree; and

- c. Except as provided for in paragraphs 23 through 26 of this Final Agreed Judgment and Consent Decree, the defendants shall not be required by this Final Agreed Judgment and Consent Decree to refund any money already paid by any such consumer; *provided, however*, that the plaintiff's agreement to, and the Court's approval of, this Final Agreed Judgment and Consent Decree provision is expressly premised upon the truthfulness, accuracy, and completeness of the sworn financial statements of Defendants Alyon and Touboul dated July 7 and 8, 2004, which contain material information relied upon by the plaintiff in negotiating and agreeing to the terms of this Final Agreed Judgment and Consent Decree. If, upon motion by the plaintiff and after a hearing, this Court should find that Defendants Alyon or Touboul made a material misrepresentation or omitted material information concerning their respective financial condition, then this Final Agreed Judgment and Consent Decree shall be reopened for the purposes of determining whether and to what extent payment of monetary redress or obtaining other equitable relief are appropriate; *provided, however*, that in all other respects this Final Agreed Judgment and Consent Decree shall remain in full force and effect, unless otherwise ordered by the Court.

**Charges Incurred Before June 15, 2003-
No Billing Inquiry Submitted on or Before January 15, 2004**

21. Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul shall provide the following dispute resolution procedures for any consumer who has received a bill from or

on behalf of Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul for Videotext Service charges incurred on or before June 15, 2003, and who has not submitted a Billing Inquiry to Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul on or before January 15, 2004:

- a. In only the first bill sent by or on behalf of Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul to each such consumer after the date of entry of this Final Agreed Judgment and Consent Decree, Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul shall clearly and conspicuously disclose, in the format set forth as Exhibit E to this Final Agreed Judgment and Consent Decree, that the consumer has a right to dispute the bill by submitting to Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul an affidavit appropriate to his or her claim, which must be signed and sworn to, under penalty of perjury, by the consumer being billed;
- b. Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul shall include on their website, in the format set forth as Exhibit F to this Final Agreed Judgment and Consent Decree, a page that sets forth the dispute resolution process and includes links to each of the Affidavits set forth as Exhibits A, B, and C to this Final Agreed Judgment and Consent Decree;
- c. That first bill referenced in paragraph 21.a. above shall be sent by first class mail within one day of the “billing date,” which shall be clearly and conspicuously disclosed on the face of the bill;
- d. If the consumer submits such a signed and sworn Affidavit to Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul within the prescribed time

period, Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul shall provide a Full Credit to such consumer;

- e. Nothing in this Final Agreed Judgment and Consent Decree shall be deemed to prevent Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul from exercising their lawful rights to collect on the bills of any consumer who does not submit a signed and sworn Affidavit to Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul within the prescribed time period; and
- f. Nothing in this Final Agreed Judgment and Consent Decree shall be construed to prevent Defendant Alyon Technologies, Inc., and Defendant Stephane Touboul from pursuing an action against any consumer who submits a perjurious affidavit.

Dispute Resolution Procedures for Charges Incurred After June 15, 2003

- 22. For any bill sent by the defendants to consumers, after the date of entry of this Final Agreed Judgment and Consent Decree, for Videotext Service charges incurred after June 15, 2003, the defendants shall:
 - a. Clearly and conspicuously disclose, on each bill sent to consumers, the “Billing Rights Summary” that is included as Exhibit G to this Final Agreed Judgment and Consent Decree; *provided, however*, that until the defendants use up their current stock of billing stationery, the complete Billing Rights Summary may be divided with sections appearing in two places on the bill; and
 - b. Comply with all of the terms and conditions set forth in the Billing Rights Summary.

Refunds

- 23. For purposes of this sub-section of this Final Agreed Judgment and Consent Decree entitled “Refunds,” an “Eligible Consumer” is a consumer who meets all of the following criteria:

- a. The consumer has received a statement for Videotext Service charges from or on behalf of any of the defendants allegedly incurred via a telephone line with a Texas telephone number on or before June 15, 2003;
 - b. The consumer has filed a written consumer complaint, including, but not limited to, by letter, electronic mail, and/or facsimile, with the Texas Attorney General's office on or before January 15, 2004; and
 - c. The consumer has paid any portion of the Videotext Service charges.
24. The defendants shall provide a cash refund to each Eligible Consumer for the total amount paid by each Eligible Consumer to the defendants. Such cash refunds must be made within thirty (30) days of the date this Final Agreed Judgment and Consent Decree is entered.
25. The defendants shall as soon as possible block the telephone numbers of all Eligible Consumers from access to all billing gateways which will result in Videotext Service charges for which any of the defendants bill, provide billing services, or otherwise attempt to collect such Videotext Service charges.
26. This sub-section entitled "Refunds" is in addition to and not in lieu of the debt forgiveness provided for in paragraph 20 of this Final Agreed Judgment and Consent Decree.

RECORDKEEPING

27. The defendants shall maintain, for a period of at least 6 years following the date this Final Agreed Judgment and Consent Decree is entered, records of all disputes received and all records demonstrating compliance with paragraphs 17 through 26 of this Final Agreed Judgment and Consent Decree, including, but not limited to, proof of express verifiable authorization obtained from billed consumers. Upon request from the Attorney General of Texas or her or his authorized representative, the defendants shall produce such records

within thirty (30) days of such request.

COMPLIANCE REPORTING BY DEFENDANTS

28. Upon request from the Attorney General of Texas or her or his authorized representative, the defendants shall produce, within 30 days of such request, accurate and complete copies of the information provided to the Federal Trade Commission pursuant to Section XIII. (Entitled “Compliance Reporting by the Defendants”) of the Final Order entered in the matter of the Federal Trade Commission v. Alyon Technologies, Inc., Telcollect, Inc., and Stephane Touboul, filed in the U.S. District Court for the Northern District of Georgia, Atlanta Division, Civil Number 1:03-CV-1297-RWS. This paragraph shall not be construed to limit the plaintiff’s powers to obtain information.

PAYMENT TO THE STATES

29. This Final Agreed Judgment and Consent Decree is executed as part of a settlement by the defendants with 23 State Attorneys General (the “States”). As part of their settlement with the States, the defendants have agreed to pay to the States a total of \$285,000.00 (Two Hundred Eighty-Five Thousand Dollars) for attorneys’ fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each state’s law at the discretion of each state’s Attorney General. Of that \$285,000.00, Defendant Stephane Touboul has agreed to be personally liable to pay \$50,000.00 (Fifty Thousand Dollars), Defendant Telcollect, Inc., has agreed to be liable to pay \$50,000.00 (Fifty Thousand Dollars), and Defendant Alyon Technologies, Inc., has agreed to be liable to pay the remaining \$185,000.00 (One Hundred Eighty-Five Thousand Dollars). The plaintiff has agreed with the other States that its share of the defendants’ payments to the States is \$15,000.00 (Fifteen Thousand Dollars).

30. The defendants and the States have agreed to payment of the \$285,000.00 on the following schedule and terms:
- a. On or before January 13, 2005, \$25,000.00 shall be due and owing to the States;
 - b. On or before April 13, 2005, \$50,000.00 shall be due and owing to the States;
 - c. On or before June 30, 2005, \$25,000.00 shall be due and owing to the States;
 - d. On or before December 31, 2005, \$50,000.00 shall be due and owing to the States;
 - e. On or before June 30, 2006, \$50,000.00 shall be due and owing to the States;
 - f. On or before December 31, 2006, \$50,000.00 shall be due and owing to the States;
 - g. On or before June 30, 2007, \$35,000.00 shall be due and owing to the States;
 - h. Defendant Stephane Touboul's liability for payment to the States of the \$285,000.00 pursuant to the settlement between the States and the defendants will be discharged after the first \$50,000.00 of payments are made to the States;
 - i. Defendant Telcollect, Inc.'s liability for payment to the States of the \$285,000.00 pursuant to the settlement between the States and the defendants will be discharged after the first \$100,000.00 of payments are made to the States; and
 - j. Defendant Alyon Technologies, Inc.'s liability for payment to the States of the \$285,000.00 pursuant to the settlement between the States and the defendants will be discharged after \$285,000.00 of payments are made to the States.
31. The Court enters an agreed to judgment in favor of the Plaintiff and against Defendant Stephane Touboul in the amount of \$2,631.56. Defendant Stephane Touboul shall pay the amount of \$2,631.56 to the State of Texas. Such payment shall be in the form of a cashier's check or certified check made payable to the "*State of Texas.*" Payment in the amount of

\$2,631.56 is due as follows: \$1,315.78 on or before January 13, 2005; and the remaining \$1,315.78 on or before April 13, 2005. Such payments shall be mailed to the attention of: Esther Chavez, Assistant Attorney General, Consumer Protection and Public Health Division, P.O. Box 12548, Austin, Texas 78711 and shall include the style and cause number of the instant case on the face of the check.

32. The Court enters an agreed to judgment in favor of the Plaintiff and against Defendant Telcollect, Inc., in the amount of \$2,631.56. Defendant Telcollect, Inc., shall pay the amount of \$2,631.56 to the State of Texas. Payment shall be in the form of a cashier's check or certified check made payable to the State of Texas. Payment in the amount of \$2,631.56 is due as follows: \$1,315.78 on or before April 13, 2005; and the remaining \$1,315.78 on or before June 30, 2005. Such payments shall be mailed to the attention of: Esther Chavez, Assistant Attorney General, Consumer Protection and Public Health Division, P.O. Box 12548, Austin, Texas 78711 and shall include the style and cause number of the instant case on the face of the check.
33. The Court enters an agreed to judgment in favor of the Plaintiff and against Defendant Alyon Technologies, Inc., in the amount of \$9,736.84. Defendant Alyon Technologies, Inc. shall pay the amount of \$9,736.84 to *the State of Texas*. Payment in the amount of \$9,736.84 is due as follows: \$2,631.58 on or before December 31, 2005; \$2,631.58 on or before June 30, 2006; \$2,631.58 on or before December 31, 2006, and the remaining \$1,842.10 on or before June 30, 2007. Such payments shall be mailed to the attention of: Esther Chavez, Assistant Attorney General, Consumer Protection and Public Health Division, P.O. Box 12548, Austin, Texas 78711 and shall include the style and cause number of the instant case on the face of

the check.

34. The plaintiff agrees to stay collection of the judgment debts through other proceedings provided by law for enforcement of judgments unless and until any of the defendants is in default as that term is defined in paragraph 35 of this Final Agreed Judgment and Consent Decree.
35. A defendant shall be in default upon the happening of one or more of the following:
- a. Failure of the defendant to inform the plaintiff of any change in the defendant's location or telephone number within twenty (20) days from the date of any such change; or
 - b. Payment of less than the amount due as specified in paragraphs 29 through 33 of this Final Agreed Judgment and Consent Decree; *provided, however* that:
 - i. Defendant Stephane Touboul shall have a sixty (60) day grace period after the date on which a payment is due from said defendant within which to tender the payment due before said defendant shall be in default;
 - ii. Defendant Stephane Touboul shall have sixty (60) days from the date on which he is in default within which to cure the default;
 - iii. Defendants Telcollect, Inc., and Alyon Technologies, Inc., shall have a thirty (30) day grace period after the date on which a payment is due from said defendants within which to tender the payment due before said defendants shall be in default; and
 - iv. Defendants Telcollect, Inc., and Alyon Technologies, Inc., shall have thirty (30) days from the date on which said defendants are in default within which

to cure the default.

- c. Default by a defendant after all grace and cure periods have expired without payments being made will, at the option of the plaintiff, render the total unpaid balance at the time of default immediately due and payable, and release the plaintiff to pursue collection of the amount due through judicial enforcement of the Final Agreed Judgment and Consent Decree.
- d. Default by a defendant will constitute a waiver by the defendant of all defenses to enforcement of this Final Agreed Judgment and Consent Decree, other than:
 - i. Competent evidence of payment in accordance with the terms of this Final Agreed Judgment and Consent Decree in any suit or other proceeding initiated by the plaintiff to collect the amount due through enforcement of this Final Agreed Judgment and Consent Decree; and
 - ii. Competent evidence demonstrating that a defendant's default was the result of any fire, flood, or other act of God.

GENERAL PROVISIONS

- 36. The defendants deny the allegations contained in the Complaint for Injunctive and Other Relief filed herein.
- 37. Nothing contained in this Final Agreed Judgment and Consent Decree shall be construed to deprive any consumer or other person or entity of any right to pursue any available remedy or remedies pursuant to applicable law.
- 38. For purposes of this Final Agreed Judgment and Consent Decree, the defendants shall, unless otherwise directed by the plaintiff's authorized representatives, mail all written notifications

to the plaintiff to: D. Esther Chavez, Office of the Attorney General, Consumer Protection & Public Health Division, P.O. Box 12548, Austin, Texas 78711.

39. Should the plaintiff discover that any defendant is in violation of this Final Agreed Judgment and Consent Decree, the plaintiff shall not bring an action under this Final Agreed Judgment and Consent Decree against the defendants before the plaintiff notifies such defendant of the alleged violation(s) and provides the defendants with at least 14 days within which to take appropriate action to correct the alleged violation(s), unless the plaintiff determines that such notice to such defendant likely would result in the possible dissipation or concealment of assets, the possible destruction or concealment of records or other evidence, or the disclosure of facts that would hinder an ongoing investigation. If such defendant demonstrates to the plaintiff's satisfaction that sufficient progress is being made toward correction of the alleged violation(s), then nothing shall prevent the plaintiff from granting such defendant additional time beyond the 14 days within which to correct the alleged violation before bringing action to enforce this Final Agreed Judgment and Consent Decree.
40. For purposes of compliance reporting and monitoring required by this Final Agreed Judgment and Consent Decree, the plaintiff is authorized to communicate with the defendants through the following counsel: Lawrence I. Fox, McDermott Will & Emery LLP, 50 Rockefeller Plaza, 11th Floor, New York, NY 10020, 212-547-5400.
41. Upon entry of this Final Agreed Judgment and Consent Decree, all matters that were raised in the plaintiff's Complaint for Injunctive and Other Relief against the defendants pursuant to the Act will be fully and finally resolved. The plaintiff hereby releases the defendants from any and all liability relating to claims which were raised in the Complaint for Injunctive

and Other Relief pursuant to the Act.

42. Jurisdiction is retained by this Court for the purpose of enforcing this Final Agreed Judgment and Consent Decree.

Signed and Entered on this the ____ day of _____, 2005.

PRESIDING JUDGE

APPROVED:

D. ESTHER CHAVEZ
Assistant Attorney General
Consumer Protection & Public Health Division
State Bar No. 04162200
P.O. Box 12548
Austin, Texas 78711
512.475.4628
FAX 512.473.8301
ATTORNEYS FOR THE STATE OF TEXAS

Defendant ALYON TECHNOLOGIES, INC.

By:

Stephane Touboul
CEO, Alyon Technologies, Inc.

Defendant TELCOLLECT, INC.

By:

Joseph Doherty
President, Telcollect, Inc.

Defendant STEPHANE TOUBOUL

Stephane Touboul

McDermott, Will & Emery

By:

Lawrence I. Fox
Attorneys for Defendants Alyon
Technologies, Inc., Telcollect, Inc.,
and Stephane Touboul

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